

Message Text

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ACTION STR-04

INFO OCT-01 IO-13 ISO-00 STRE-00 AF-08 ARA-06 EA-07 EUR-12
NEA-10 FEA-01 AGRE-00 CEA-01 CIAE-00 COME-00 DODE-00
EB-07 FRB-03 H-01 INR-07 INT-05 L-03 LAB-04 NSAE-00
NSC-05 PA-01 AID-05 CIEP-01 SS-15 ITC-01 TRSE-00
USIA-06 PRS-01 SP-02 OMB-01 OIC-02 /133 W
----- 112941 /60

R 131712Z DEC 76
FM USDEL MTN GENEVA
TO SECSTATE WASHDC 2130

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STR ACTION

E.O. 11652: N/A
TAGS: ETRD MTN
SUBJ: SUBSIDIES/CVD--CANADIAN WORKING PAPER

1. SUMMARY. I GAVE AMB GREY (CANADA MY INFORMAL COMMENTS ON HIS FIRST DRAFT WORKING PAPER ON DEC 10. HE TOOK CAREFUL NOTE OF ALL OF THE POTENTIAL PROBLEM AREAS FOR THE U.S. THAT I COULD IDENTIFY ON A PERSONAL BASIS. GREY WAS RECEPTIVE TO SOME OF THESE POINTS, BUT UNRECEPTIVE TO OTHERS. HE INTENDS TO TRY TO GET A CLEAN DRAFT READY ABOUT DEC 17 FOR SUBMISSION TO SECRETARIAT FOR GENERAL CIRCULATION. HE HAS HAD SOME INFORMAL COMMENTS FROM THE JAPANESE DELEGATION (MOSTLY QUESTIONS). HE HAS HAD NO REACTION FROM THE EC AND HE INDICATED INTENTION TO PROCEED WITH CIRCULATION OF A CLEAN DRAFT EVEN IF THEY REMAIN SILENT THIS WEEK. END SUMMARY.

2. I TOLD AMB GREY THAT THE U.S. PROPOSAL OF OCT 1975 REMAINS ON THE NEGOTIATING TABLE AND THAT MY PERSONAL COMMENTS ON HIS FIRST DRAFT WORKING PAPER WOULD IN NO WAY COMMIT THE U.S. GOVERNMENT TO THE MAIN THRUST OR ANY OF THE INDIVIDUAL PROVISIONS OF HIS DRAFT. NEVERTHELESS, I WAS CERTAIN WASHINGTON WAS ANXIOUS TO SEE THE SUBSIDIES/CVD SUBGROUP BECOME ENGAGED IN SERIOUS NEGOTIATIONS AND I THEREFORE WELCOMED HIS INITIATIVE AS WELL AS HIS WILLING-
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NESS TO GIVE ME A CRACK AT IT BEFORE GENERAL CIRCULATION.

BASING MYSELF ON INFORMAL ADVICE OFFERED BY WASHINGTON AGENCY REPS AT MEETING WITH ME HERE IN GENEVA ON DEC 1, I REVIEWED 15 PROBLEM AREAS FOR THE U.S. RAISED BY HIS FIRST DRAFT. I URGED HIM, HOWEVER, NOT TO INTERPRET THIS ARRAY OF CRITICAL COMMENT AS A SIGNAL THAT WE WANTED HIM TO WITHDRAW HIS INITIATIVE; THERE WERE A NUMBER OF ELEMENTS IN COMMON WITH THE U.S. PROPOSAL AND SOME OF HIS INNOVATIONS WERE INTERESTING AND MIGHT HELP BRIDGE DIFFERENCES.

3. ALTHOUGH I MADE NO SPECIFIC PROPOSALS FOR PRECISE LANGUAGE CHANGES IN HIS DRAFT, I FOUND GREY MODERATELY RECEPTIVE ON FOLLOWING POINTS AND BELIEVE HIS REVISED VERSION MAY DIFFER SOMEWHAT FROM THE FIRST DRAFT:

(A) DISPUTE SETTLEMENT -- HE SEEMED TO TAKE THE POINT THAT THE FUNCTION OF A PANEL SHOULD BE CONFINED TO QUESTIONS OF FACT AND LAW.

(B) AGRICULTURE -- INTRODUCTORY LANGUAGE MAY BE FEASIBLE TO AVOID OPTICAL IMPRESSION OF HIS FIRST DRAFT THAT AGRICULTURE IS ENTIRELY SEPARATE FIELD; REAFFIRMATION OF SOME OF THE ELEMENTS (WHICH ARE ADMITTEDLY WEAK) NOW IN ARTICLE XVI MAY BE WORTHWHILE; AND PROBLEM POSED BY THE THREE RATHER ILL-DEFINED SUBJECTIVE CATEGORIES MIGHT BE HELPED BY ATTEMPTING TO LIST AG SUBSIDIES THAT SHOULD BE PROHIBITED, SUBJECTED TO A STAND-STILL PROVISION, OR SUBJECTED TO A PHASE-OUT RILE.

(C) REGIONALITY -- GREY NOT SURE THIS CONCEPT WORTH ALL THE EFFORT IT WOULD REQUIRE TO GET AGREEMENT AND HE TOOK NOTE OF OUR PARTICULAR CONSTITUTIONAL PROBLEM.

(D) DEFINITION OF "OTHER SUBSIDIES" -- HE AGREED THIS WILL NEED SUBSTANTIAL TIGHTENING.

(E) DEFINITION OF COUNTERMEASURES -- HE AGREED THEY SHOULD NOT GO BEYOND GATT ARTICLES XXII AND XXIII BUT HE ALSO AMENABLE TO POSSIBLE LIST-LIMITED OFFICIAL USE

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ING OF SUCH MEASURES.

(F) THE COMBINATION OF BOTH A LIST AND A DEFINITION FOR EXPORT SUBSIDIES IN PROPOSED ARTICLE I OF THE CODE -- GREY INDICATED NEXT DRAFT WOULD PROBABLY HAVE LANGUAGE TO THIS EFFECT.

(G) USE OF CTIP AND AG COMMITTEE DRAFT EXPORT
SUBSIDY LISTS RATHER THAN CANADIAN REDRAFT -- GREY SEES
MERIT IN AVOIDING HAVING SUBGROUP BOG DOWN ON DEFINITION
LIST PROBLEM AT OUTSET OF ITS WORK AND WE GOT IMPRESSION
HE WILL USE THE OLD LISTS FOR A STARTER.

(H) GENERAL PROVISIONS -- GREY AGREED ESCAPE CLAUSES
OF HIS DRAFT NEED TIGHTENING AND HE WILL SEE WHAT HE
CAN DO, TAKING ACCOUNT OF EXISTING GATT ESCAPE CLAUSES.

(I) ENTRY INTO FORCE LANGUAGE -- GREY TOOK MY POINT
THAT PROPOSED CODE WOULD INVOLVE ACTION BY MANY COUNTRIES
AND THUS SITUATION ENTIRELY DIFFERENT FROM KENNEDY ROUND ASP
AGREEMENT AND, ACCORDINGLY, NO NEED TO SINGLE OUT U.S.
AS SOLE TRIGGER FOR ENTRY INTO FORCE.

4. GREY WAS LESS RESPONSIVE ON A NUMBER OF OTHER POINTS,
NAMELY:

(A) S AND D FOR LDC'S -- WHILE HE LISTENED POLITELY TO
MY CRITICISM OF HIS APPROACH, HE DIDN'T THINK THAT I
OR THE U.S. HAD SO FAR ADVANCED A VIABLE ALTERNATIVE;
"COMPETITIVE NEED" AND "GRADUATION" WERE RESPECTABLE
CONCEPTS BUT NEEDED TO BE SPELLED OUT IN SOME OPERATIONAL
MANNER IF WE EXPECTED TO SEE SUCH IDEAS REFLECTED IN
PRECISE LANGUAGE OF A PROPOSED CODE.

(B) MATERIAL INJURY -- GREY PROFESSED TO UNDERSTAND
OUR SENSITIVITY ABOUT THIS POINT BUT HE NOTED THAT GATT
ARTICLE VI ITSELF USES THE TERM "MATERIAL INJURY" AND ONE
OF CANADA'S AND OTHER COUNTRIES' MAIN OBJECTIVES IN THIS
EXERCISE IS TO HAVE U.S. APPLY GATT ARTICLE VI. (IT
IS POSSIBLE GREY MAY TRY TO FINESSE THIS POINT IN HIS
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NEXT DRAFT, BUT I AM NOT VERY SANGUINE ABOUT IT.) IN
GREY'S VIEW THE SAME CRITERIA SHOULD APPLY IN THE ANTI-
DUMPING AND CVD CODES.

(C) GRANDFATHER CLAUSE -- WHILE GREY TOOK NOTE THAT
U.S. WILL BE UNABLE TO REDO ANY OUTSTANDING CVD ORDERS,
GREY COUNTERED WITH POSSIBILITY OF A TIME LIMIT TO
BRING OUTSTANDING ORDERS INTO COMPLIANCE.

5. I FOUND GREY UNRECEPTIVE TO MODIFYING THE BASIC
APPROACH IN HIS FIRST DRAFT ON TWO POINTS OF MAJOR INTEREST
TO US, NAMELY:

(A) THE PROPOSED REQUIREMENT OF PRIOR MULTI-
LATERAL APPROVAL OF CVD -- WHEN I SAID THIS NOTION WAS

A NON-STARTER, GREY RESPONDED THAT IF THE U.S. MAIN-
TAINS SUCH A POSITION THERE MAY WELL BE NO CODE AT ALL.

(B) TRANSNATIONAL CORPORATIONS -- WHILE HE SEES RISK
THAT SOME DELEGATIONS COULD SEIZE THIS ITEM TO GO OFF ON
A TANGENT, HE HIMSELF HAS A MAJOR HANGUP ABOUT THE
MICHELIN CASE AND DOES NOT SHOW ANY SIGNS OF GIVING UP ON
HIS INSISTENCE THAT A CODE MUST PREVENT A REPETITION
OF OPPORTUNITIES FOR MULTINATIONALS TO MANIPULATE SUB-
SIDY COMPLAINTS FOR THEIR OWN COMPETITIVE ADVANTAGE.
I POINTED OUT THAT A CARTEL WOULD HAVE SAME POSSIBILITIES,
THEREFORE IT WAS NOT THE PHENOMENON OF MULTINATIONALS THAT
HE WAS IN FACT ADDRESSING HIMSELF TO. GREY MUSED THAT,
AS A LEGAL MATTER, A COMPANY RELINQUISHES ITS RIGHT
TO COMPLAIN ONCE ITS SUBSIDIARY GIVES ASSURANCES TO
ANOTHER COUNTRY THAT IT WILL NOT COMPLAIN ABOUT SUBSIDY
PRACTICES.

6. GREY RESPONDED TO MY CRITICISM OF SINGLING OUT
EXPLORATION COSTS FOR SPECIAL TREATMENT SAYING THAT IT
IS HIS INTENTION THAT THE ARRANGEMENT WOULD ALLOW GOVERN-
MENTS TO SUBSIDIZE SUCH ACTIVITY WITHOUT LIMIT. CULBERT

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